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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,100

11/09/2004

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EXAMINER

STORMER, RUSSELL D

ART UNIT

PAPER NUMBER

3617

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/511,100	Applicant(s) SUGIHARA ET AL.	
	Examiner Russell D. Stormer	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 14, 2008 has been entered.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the guide skirt body comprising an annular body as set forth in claim 1 must be shown or the feature canceled from the claim. The term "annular" is defined as shaped like or forming a ring. A ring is a circular object. Applicants' new drawing figure 4A shows the guide member 71 as a closed member, but as this member is not circular or shaped like a ring, the member 71 is not shown to be annular, by any definition of the word.

Further, the guide skirt body being "fixed to the vehicle body" as set forth in claim 1 must be shown or the feature canceled from the claim. The connection between the guide skirt body and vehicle body is not shown in any drawing figure. Further, no part of the vehicle body is shown. See line 14 of the instant specification.

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The amendment filed March 14, 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The addition of figure 4A, added in an attempt to show the guide member 71 as an annular element, introduces new matter. There is no description or suggestion in the disclosure as originally filed that the guide member would have a shape as now shown

in figure 4A. The newly shown rectangular end has no support in the original disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Case in view of Norelius.

Case (newly cited) discloses an endless rubber crawler or track for a tracked vehicle, comprising a drive wheel 3, and an idler wheel 4. The endless track includes a plurality of projections or lugs 10 formed on the inner surface of the track to engage the teeth 9 which extend radially from the central portion of the drive wheel and engage the projections 10 in a longitudinal manner.

A guide skirt is not shown.

Norelius (previously cited) teaches a frame for an endless track vehicle having attached thereto a pair of skirt bodies or side plates 14 which have rails or guide members 16 to support the upper run of the track. The rails are positioned on an outer side of where the teeth of the drive wheel meet the projections of the track, and as shown in figure 1, the rails comprise an annular body which is positioned closer to an upper part of the drive wheel 11 than a lower part thereof at a predefined clearance. Inasmuch as the rails 16 support the track, they would guide the track.

From this teaching it would have been obvious to provide the vehicle of Case with a guide skirt body attached to the frame thereof to support and guide the track as it travels around the drive wheel and the idler and the bogie wheels. The guide skirt could be disposed closer to an upper part of the drive wheel than a lower part such that it would guide the upper run of the track since the upper run is not guided by bogie wheels as the lower run is shown to be. Such a modification would yield the predictable result of reducing the chance of the track from becoming separated from the drive wheel or the other wheels of the vehicle.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Case in view of Norelius as applied to claim 1 above, and further in view of Misawa (Japanese Published Application; newly cited).

The projections on the track of Case as modified by Norelius are not formed on a "protruding streak."

As shown in figures 2, 4, 7, and 9 at least, Misawa teaches an endless track comprising a plurality of projections 8 formed on a continuous protruding streak on the inner surface of the track. The streak is straddled by the bogies or rollers 6.

From this teaching it would have been obvious to form a continuous raised streak on the inner surface of the endless track of Case as modified by Norelius to support the lugs or projections and to provide a formation for the rollers to straddle as this would serve to provide a better interface between the bogie wheels and the track, and would

yield the predictable result of keeping the endless track centered on the bogie wheels and would reduce the chances of the track from becoming separated from the wheels.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Case in view of Norelius as applied to claim 1 above, and further in view of Johnson.

The gap between the guide skirt and the lugs of the track is not clearly defined in the endless track assembly of Case as modified by Norelius.

Johnson (newly cited) teaches a guide skirt 1 attached to the frame of an endless track vehicle comprising a rail 2 which extends along the track adjacent the position where the drive wheel 16 interacts with the track to retain alignment of the track. As shown in figure 2, the guide rail portion 2 of the skirt is positioned close enough to the teeth of the drive wheel and the drive lugs of the track to form a gap which is equal to or less than the width of the drive lugs in a transverse direction.

From this teaching it would have been obvious to position the guide skirt of the track assembly of Case as modified by Norelius such that a gap between the skirt and the lugs or projections of the track was equal to or less than the width of the projections. Those of ordinary skill in the art would have recognized that a gap measuring larger than the width of the projections would allow the track to completely disengage with the drive teeth of the drive wheel before contacting the guide skirt and thus would not effectively keep the endless track from becoming separated from the drive wheel. Further, forming the gap to be less than the width of the projections would yield the predictable result of causing projections of the track to contact the guide skirt before

disengagement with the teeth of the drive wheel and therefore prevent separation therefrom.

Response to Arguments

Applicant's arguments March 14 with respect to claims 1, 2, 3, and 5 have been considered but are not persuasive.

Applicants' reluctant addition of the term "Prior Art" to figures 1A, 1B, and 2 is noted. However, the argument on page 6 of the Response filed March 14, 2008 that the term "related art" is somehow equivalent to the term "prior art" is not well-taken. Applicants cite section 608.02(g) of the MPEP as requiring a legend "such as prior art." The word "prior" is defined as "preceding in time" or "earlier" or "former." The word "related" is defined as "associated" or "connected" in some manner. Therefore, "related art" is not a term such as "prior art" inasmuch as it does not convey that the subject matter in the drawing figure preceded or came earlier than the subject matter of the instant invention.

The statement on page 7 mentioning the rejection using "what is alleged to be Applicants' admitted prior art figures 1A, 1B, and 2 is not understood. These figures are clearly described in the instant specification as showing examples of conventional drive wheels.

On page 7, Applicants cite a portion of MPEP section 2143(G) which notes that the TSM test (teaching, suggestion, or motivation in the prior art) is one of a number of valid rationales that can be used to determine obviousness in an apparent attempt to

refute the statement in the previous office action that “the argument concerning the alleged lack of a teaching, motivation, or suggestion existing the references is moot inasmuch as this type of argument has been foreclosed by the Supreme Court decision in KSR International Co. v. Teleflex Inc., 82, USPQ2d 1385.” Applicants should note that this wording is provided by the USPTO, and that the TSM test is no longer required (it never was required as part of the Graham vs. Deere test) although it may still be used. See MPEP 2143(G).

Applicants next allege that the previous office action failed “to properly support with a clear and explicit articulation of the reason(s) why the claimed invention allegedly would have been obvious.” On page 8 Applicants further opine that the previous office action merely provided “conclusory” statements and failed to address reasons why those of ordinary skill would have reason to pursue known options, and the action did not provide a statement of support as to a reasonable expectation of success “as stipulated in MPEP 2143(E). Besides being incorrect, such statements are inflammatory and do not serve to advance prosecution. The previous office action was clear and articulate and would have been understood by those of ordinary skill in the art. What Applicants allege are “mere conclusory statements” are actually statements giving the reasons or rationale for a modification. For instance, the statement “From this teaching it would have been obvious to fix a skirt to the frame of the device of Takeuchi et al adjacent to the track to prevent build-up of mud or debris on the track” gives a reason to modify the device of Takeuchi et al. Why would one of ordinary skill add a skirt to the device of Takeuchi et al? To prevent the build-up of mud or debris on the

track. Examiners are not required to develop a narrative of a person of ordinary skill in the art confronting problems, researching possible solutions, and pursuing the known options within his or her technical grasp as Applicants appear to believe.

Further, a statement detailing a "reasonable expectation of success" is not required to show obviousness in a rejection under 35 U.S.C 103 as alleged by Applicants. Applicants' reference to MPEP 2143(E) will show that a showing of "reasonable expectation of success" must be shown in an "Obvious to Try" rejection. Applicants' attention is directed to MPEP 2143(D), which is more applicable to the rejections made in this and the previous office action.

The statement on page 8 that the references in any permissible combination fail to teach the annular body as shown in figure 4A is noted, but it is the limitations in the claims which need to be taught or suggested.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references show other endless track assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (571) 272-6687. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Russell D. Stormer/
Primary Examiner, Art Unit 3617